Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1340

CHARLES W. JONAS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Suite 708,
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Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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CHARLES W. JONAS,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on January 30, 1979.

OPINION BELOW.

The opinion of the Court of Appeals is not officially reported. It is set out in the Appendix, *infra*, pp. 1-5.

JURISDICTION.

The judgment of the Court of Appeals was entered on January 30, 1979. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

Whether the Defendant was deprived of his Sixth Amendment right to counsel of choice by the trial court's denial of the Motion for Substitution of Counsel.

CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, Sixth Amendment.

STATEMENT OF THE CASE.

The Defendant Charles Jonas was charged with violating 18 U. S. C. § 2315 for knowingly and unlawfully receiving, concealing and storing a stolen $1,000,000.00 United States Treasury Bill.

The Defendant was convicted three times by a jury. A Motion for a New Trial was granted after the first conviction. The second conviction was reversed by the Seventh Circuit in an opinion reported at 540 F. 2d 566 (1976). The third conviction took place in April 1977.

The Defendant was represented throughout these proceedings by staff attorneys from the Federal Defender Program. Prior to the commencement of the third trial, the staff attorney who was representing Mr. Jonas sought leave of Court to withdraw as attorney of record and substitute the appearance of private retained counsel who, through the staff attorney, requested a four week continuance of the trial date.

The staff attorney informed the Court that the Defendant had written the Federal Defender Program five weeks prior to the trial date that he wished to retain private counsel for the third trial. However, the Defendant, who is a diabetic, was not able to retain private counsel at that time because of illness.

When the case was called for trial the defendant traveled to Chicago to confer with his new attorney. Although this staff

attorney had been involved with the second trial he had only assisted the chief trial counsel. During this conference the Defendant was advised to plead guilty. After this conference the Defendant attempted to retain the services of a Massachusetts attorney to represent him at trial.

The Court denied the Motion. The trial commenced and the jury returned a verdict of guilty.

The Seventh Circuit affirmed the conviction. The Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT.

The Defendant Was Deprived of His Sixth Amendment Right to Counsel of His Choice by the Trial Court's Denial of the Motion for Substitution of Counsel.

Throughout the history of this indictment, the Defendant was represented by staff attorneys from the Federal Defender Program for the Northern District of Illinois. In each trial, however, Mr. Jonas was represented by a different staff attorney. The staff attorney who represented Mr. Jonas at the third trial was involved in the second trial, but he merely assisted trial counsel.

More than five weeks prior to the April 18, 1977 trial date, and before this trial date was even announced, Mr. Jonas wrote the Federal Defender Program that he was going to retain private counsel. Unfortunately, Mr. Jonas became ill as a result of his diabetic condition. This illness culminated in an eleven-day period of hospitalization during the time between the writing of the letter and the trial date.

When he was notified of the trial date, Mr. Jonas traveled to Chicago to meet with his new counsel. As the record reveals, this meeting took place on the Friday afternoon preceding the Monday morning trial date. It was only then that Mr. Jonas discovered his new trial counsel was recommending a guilty plea. Over the weekend the Defendant made efforts to retain private counsel in whom he would have confidence.

The essence and meaning of the constitutional right to counsel lies not in the mere presence of counsel but rather in the presence of counsel in whom the client trusts. This bedrock of trust is even more crucial in a criminal case where a citizen's liberty may be in jeopardy. The argument on the Motion for Substitution of Counsel reveals only one meeting between counsel and his client on the eve of trial. The meeting resulted in the erosion of the bedrock of client confidence.

At this point, Mr. Jonas wasted no time in retaining new counsel. The withdrawal could have been accomplished that morning. The appearance for new counsel would have been filed by Friday; the trial could have proceeded within four weeks.

A four-week trial delay is not too steep a price to pay in order to protect Sixth Amendment rights.

CONCLUSION.

For all these reasons, it is respectfully requested that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 30, 1979
(Argued November 29, 1978)

Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. ROBERT A. GRANT, *Senior District Judge**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 77-1628 *vs.*

CHARLES W. JONAS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 74-CR-633

Honorable
John Powers Crowley,
Judge.

ORDER.

This appeal is from defendant's third conviction for violation of 18 U. S. C. § 2315, in that he was found guilty of knowingly and unlawfully receiving, concealing, and storing a $1,000,-000.00 United States Treasury Bill.

* Senior District Judge Robert A. Grant of the United States District Court for the Northern District of Indiana is sitting by designation.

United States Attorney's comment that disagreements between attorneys and clients are as old as the legal profession and their mere existence, without more, cannot be grounds for a finding of inadequate representation. The only contention raised that theoretically could cast doubt on the quality of Jonas' defense is an allegation that the Federal Defender, Mr. Sher, failed to introduce evidence that would have attacked the credibility of a government witness. The allegedly relevant evidence consists of certain telephone records. However, as is clearly established in appellee's brief, defendant has seriously misread the record. The conversation that the defendant refers to occurred face to face with the government's witness and, therefore, it is obvious that Jonas' personal telephone records would not have aided his defense. Defendant has not even replied to the government's explanation.

Mr. Sher assisted in the second trial, argued the case on appeal, and on the morning of the third trial, told the court that he was prepared to try the case. We are convinced that Jonas' Sixth Amendment rights have not been violated in that he received legal assistance quite adequately meeting a minimum standard of professional representation. *United States* v. *Twomey*, 510 F. 2d 634, 641 (7th Cir. 1975).

For the reasons stated herein, the action of the district court is AFFIRMED.